



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 4, 1996

Robert E. Hager
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR96-2023

Dear Mr. Hager:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36898.

The City of Lancaster (the "city"), which you represent, received a request for information concerning proof of liability insurance for the city. You state that the city has no specific document that meets the description of the information sought by the requestor, but you have submitted documents to this office pertaining to the city's insurance coverage. You claim that these documents are excepted from disclosure under sections 552.101 and 552.103 of the Government Code.

We first address your argument under section 552.101, which excepts information "considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert that information about the existence or amount of insurance held by the city is confidential under section 101.104 of the Texas Civil Practice and Remedies Code, which provides:

- (a) Neither the existence nor the amount of insurance held by a governmental unit is admissible in the trial of a suit under this chapter.
- (b) Neither the existence nor the amount of the insurance is subject to discovery.

This provision prohibits the discovery and admission of insurance information during a trial under the Texas Tort Claims Act, chapter 101 of the Civil Practice and Remedies Code. It does not make insurance information confidential for purposes of chapter 552. See Open Records Decision No. 551 (1990) at 3 (provisions of section 101.104 "are not relevant to the availability of the information to the public"). Moreover, this office has

explicitly stated that section 552.101 of the Government Code does not encompass discovery privileges. Open Records Decision No. 575 (1990) at 2. Therefore, the city may not withhold the requested information under section 552.101.

We next address your argument that the requested information is excepted from disclosure under 552.103. Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under section 552.103(a). Litigation cannot be regarded as "reasonably anticipated" unless there is concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 452 (1986), 331 (1982), 328 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982). Because the city has provided no objective evidence whatsoever that the requestor plans to sue the city, but merely states the request "could involve" future litigation, we conclude the information may not be withheld under 552.103.

Finally, concerning your assertion that the city has no specific documents meeting the description of the request, we would note that a governmental body must make a good faith effort to relate a request for information to information which it holds. Open Records Decision No. 561 (1990). When a governmental body is presented with a broad request for information rather than for specific records, it should advise the requestor of the types of information available so that he may narrow his request. Open Records Decision Nos. 563 (1990), 561 (1990); see Gov't Code section 552.222(b). It appears from the sample documents you have submitted the city does have information responsive to that requested, and under the "good faith" standard, should release the information to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

Ref.: ID# 36898

Enclosures: submitted documents

cc: Mr. Tim Speak
4141 Portwood
Lancaster, Texas 75146
(w/o enclosures)